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EXECUTIVE TRUSTEE SERVICES, LLC

(incorrectly sued herein as “ETS SERVICES, LLC”)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KATHERINE D. SHUMAN,

Plaintiff,

vs.

ETS SERVICES, LLC, DOE 1 and
DOES 2-50, inclusive,

Defendants.

) CASE NO. EDCV 08-01773 VAP (OPx)

)

) **DEFENDANT EXECUTIVE TRUSTEE**

) **SERVICES, LLC’S REPLY IN**

) **SUPPORT OF MOTION TO DISMISS**

)

) Honorable Virginia A. Phillips

)

) Hearing:

) Date: January 26, 2009

) Time: 10:00 a.m.

) Place: Courtroom 2

)

)

Defendant Executive Trustee Services, LLC (“Executive Trustee”) (incorrectly sued herein as “ETS Services, LLC”) filed a Motion to Dismiss all causes of action contained in Plaintiff’s Complaint on December 10, 2008. Executive Trustee hereby submits this Reply in support of its Motion to Dismiss pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6).

The hearing on Executive Trustee's Motion to Dismiss is scheduled for Monday, January 26, 2009, at 10:00 a.m. Plaintiff's Opposition to Executive Trustee's Motion to Dismiss was due on or before January 12, 2009. As of the date of this Reply, Plaintiff has failed to file an opposition to Executive Trustee's Motion to Dismiss. Any opposition filed now would obviously prejudice Executive Trustee. Central District of California Local Rule 7-12 provides:

Failure to File Required Papers

The Court may decline to consider any memorandum or other paper not filed within the deadline set by order or local rule. The failure to file any required paper, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion.

Accordingly, Plaintiff's failure to oppose Executive Trustee's Motion to Dismiss should be deemed to demonstrate Plaintiff's consent to the dismissal of the Complaint with prejudice, as requested by Executive Trustee. Therefore, this Court should grant Executive Trustee's Motion to Dismiss and dismiss Plaintiff's entire Complaint with prejudice. *See Cortez v. Hubbard*, No. 07-4556, 2008 WL 2156733, at *1 (C.D. Cal. May 18, 2008); *Ferrin v. Bias*, No. 02-535, 2003 WL 25588274, at *1 (C.D. Cal. Jan. 2, 2003).

Central District of California courts have recently granted a number of motions to dismiss nearly identical complaints filed by Plaintiff's counsel. *See, e.g., Acevedo v. ETS Servcs., LLC*, No. CV 08-1529-VAP (JTLx) (C.D. Cal. Dec. 17, 2008); *Pineda v. Saxon Mortgage Servs., Inc.*, No. CV 08-1187 JVS (ANx), 2008 WL 5187813 (C.D. Cal. Dec. 10, 2008); *Alcaraz v. ETS Services, LLC*, No. CV 08-1502 VAP (JCx) (C.D. Cal. Dec. 9, 2008); *Izenberg v. ETS Servs., LLC*, No. CV 08-06888 MMM (SSx), 2008 WL 5179088 (C.D. Cal. Dec. 8, 2008). At least two Central District of California courts have dismissed nearly identical complaints filed by Plaintiff's counsel with prejudice. *See Canchola v. ETS Servs., LLC*, No. CV 08-07070 VBF (AGRx) (C.D. Cal. Dec. 29, 2008); *Ramero v. Saxon Mortgage Servs.*, No. CV 08-06982 R (RCx) (C.D. Cal. Dec. 2, 2008). A number of California district courts have

1 found that plaintiffs in these cases and Plaintiff's counsel appear to be improperly
 2 using the judicial process to delay lawful nonjudicial foreclosures. *See, e.g., Candelo*
 3 *v. NDEX West, LLC*, No. CV F 08-1916 LJO DLB, 2008 U.S. Dist. LEXIS 105926,
 4 *20 (E.D. Cal. Dec. 23, 2008) (noting the "Court's concerns about delay tactics");
 5 *Vargas v. Recontrust Co.*, No. CV F 08-1683, 2008 U.S. Dist. LEXIS 100115, *9
 6 (E.D. Cal. Dec. 1, 2008) (surmising that the complaint was filed in an attempt to delay
 7 nonjudicial foreclosure). Plaintiff's failure to file an opposition in this case
 8 demonstrates that Plaintiff is uninterested in defending her Complaint.

9 For the reasons stated above, this Court should act to prevent Plaintiff from
 10 achieving her goal of continuing to delay a lawful nonjudicial foreclosure and grant
 11 Executive Trustee's Motion to Dismiss with prejudice because the legal theory
 12 underlying Plaintiff's Complaint is unsupported by law and because Plaintiff fails to
 13 plead sufficient facts to state a claim pursuant to Federal Rules of Civil Procedure 9(b)
 14 and 12(b)(6).
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17 Dated: January 15, 2009

Respectfully submitted,

18 LOCKE LORD BISSELL & LIDDELL LLP
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20 By: /s/ John M. Hochhausler
 21 John M. Hochhausler
 22 Matthew B. McClendon

23 Attorneys for Defendant
 24 EXECUTIVE TRUSTEE SERVICES, LLC
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CERTIFICATE OF SERVICE

I, John M. Hochhausler, an attorney, do hereby certify that on January 15, 2009, I caused a copy of the foregoing DEFENDANT EXECUTIVE TRUSTEE SERVICES, LLC'S REPLY IN SUPPORT OF MOTION TO DISMISS to be served by the method so indicated below upon the following parties:

Scott M. Gitlen
Mitchell W. Roth
or Attorney currently responsible for
the matter referenced herein
M.W. Roth, PLC
13245 Riverside Drive, Suite 320
Sherman Oaks, California 91423
Via U.S. Mail, postage prepaid.

Dated: January 15, 2009

By: /s/ John M. Hochhausler
John M. Hochhausler

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